IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE SIDE JURISDICTION
FIRST APPEAL NO.32 OF 1991
AND
FIRST APPEAL NO.766 OF 1991

F.A.NO.32 OF 1991

Arvind Bhaskar Limaye,)
through his Power of Attorney-)
Shri Prakash V.Deodhar.).. Appellant

Vs.

The State of Maharashtra.).. Respondent

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Shri S.M.Kamble for the Appellant.

Shri A.R.Patil, AGP for the respondent.

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AND

F.A.NO.766 OF 1991

The State of Maharashtra,)
through the Spl.L.A.O.,)
Metro Centre No.I, Panvel.).. Appellant
(Org.Opponent)

Vs.

Shri Arvind Bhaskar Limaye,)
Age 47, R/o.Panvel,)
through his Power of Attorney-)
Shri Prakash V.Deodhar.)
Age-36 Yrs., Occ: Agri.,)
R/o.Panvel, Dist. Raigad.).. Respondent
(Org.Claimant)

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Shri A.R.Patil, AGP for the Appellant.

Shri S.M.Kamble for the Respondent.

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CORAM : R.M.S.KHANDEPARKAR &
V.M.KANADE, JJ.

DATED : 1ST SEPTEMBER, 2005.

ORAL JUDGMENT : (Per V.M.Kanade, J)

1. The appellant/original claimant has filed the appeal being First Appeal No.32 of 1991 and the First Appeal No.766 of 1991 has been filed by the State of Maharashtra.

2. Both the appellants in the aforesaid appeals are challenging the order passed in the Land Acquisition Reference No.114 of 1985 decided by the Civil Judge, Senior Division, Alibag, District Raigad, whereby he partly allowed the reference and ordered the State Government to pay an amount of Rs.3,69,932.92ps. to the claimant with interest as per Section 28 of the Land Acquisition Act, 1894 at the rate of 9% per annum on the said amount from the date of the said order till realisation of the entire amount along with costs to the claimant and directed the Government to bear its own costs.

FACTS:

3. Brief facts, which are relevant for deciding the appeals, are as under:-

. The Special Land Acquisition Officer issued notification under Section 4 in respect of Survey No.48/B for an area of land admeasuring 537 sq.meters, out of the entire area of the land. The said notification under Section 4 was published on 30th August, 1984 in the Government Gazette, and thereafter, the notification under Section 6 was also published. Individual notice under Section 9(3)(4) was served upon the claimant. The claimant had replied the said notice and claimed Rs.2,000/- per sq.meter for the valuation of the land. The Special Land Acquisition Officer awarded compensation at the rate of 7.50 in respect of Survey No.48, Hissa No.B(Pt.) for an area admeasuring 2770 sq.meters and awarded compensation at the rate of Rs.20/- in respect of Survey No.48, Hissa No.B(Pt.) in respect of an area admeasuring 537 sq.meters. Against the said award passed by the Special Land Acquisition Officer, the claimant made application under Section 18 of the said Act in which he claimed compensation at the rate of Rs.2000/- per sq. meter. The evidence was led by the

claimant and the reference Court awarded compensation in respect of land in the Survey No.48, Hissa No.B(Pt.) admeasuring 537 sq. meter to the tune of Rs.150/- and also awarded damages to the tune of Rs.150/- per sq.meter. The Government has preferred the appeal being First Appeal No.766 of 1991 challenging the enhanced compensation granted by the Reference Court and the claimant is challenging the amount of compensation not granted to the tune of Rs.2,000/- per sq.meter as claimed by him in his Reference Application under Section 18 of the said Act.

4. Learned counsel appearing on behalf of the claimant has taken us to the judgment and order of the Reference Court as also the evidence produced by the claimant. He submitted that the Reference Court has committed a grave error in law in not granting compensation at the rate of Rs.2,000/- per sq.meter as the market value for the said land. He submitted that the Reference Court had not taken into consideration the evidence which was brought on record by the claimant and whereby he had cited an instance of a land which was leased by the CIDCO at the rate of 1,873/- per sq.meter, which was infact inferior to the land which was acquired by the S.L.A.O.. He submitted

that the Reference court had completely ignored this fact while coming to the conclusion that the said fact was not comparable instance on the basis of which the market value of the suit land could be determined. He further submitted that the Reference Court had also not taken into consideration the evidence of Shri Kulkarni, who had been examined as the Expert Valuer. He submitted that the said Shri Kulkarni had stated in his evidence that the suit lands were near Panvel Bus Station, Panvel Railway Station as also the Post Office, whereas the land which was leased out by the CIDCO was far away from the Panvel Railway Station. He further submitted that the lower Court had not appreciated the fact that the evidence on record clearly establishes that the land had already been converted for non-agricultural use and the land was levelled and therefore, there was no question of any additional development cost being incurred for giving the said land for residential and commercial purposes. He further submitted that the trial Court had also ignored the fact that the land was free-hold land and the CIDCO had offered the higher rate for a land which was leased out to CIDCO. He submitted that the claimant had produced voluminous documentary evidence on record in the form of court award and sale instances in order to justify the rate claimed by the

claimant. He submitted that the Court however had relied only on one instance and granted the said relief.

5. The Government Pleader assailed the submissions made by learned counsel appearing on behalf of the claimant. He submitted that from the evidence of the expert valuer Shri Kulkarni, it could be seen that the expert valuer had visited the site in December, 1987 and had given his report in respect of the valuation of the land wherein the notification under Section 4 was issued in 1984. He submitted that therefore, the evidence of Shri Kulkarni could not be relied upon and had to be discarded in its entirety. He further submitted that the lower court has erred in deducting only 10% by way of development charges from the compensation to be paid to the claimant. He further submitted that the reference Court had erred in relying on the several land acquisition references in his judgment without taking into consideration the date of publication of the notification under Section 4 as also the various other factors which are similar to the same land reference award and that of the present suit land, and in the absence of the observations of similarities on the two awards, he erred in relying on those reference awards. He

submitted that the lower Court had erred in holding that the market value of the land was Rs.150/- p.s.m. He submitted that the claimant had not produced any sale deed for the acquired land for proving the market value. He therefore submitted that the lower Court erred in arriving at the market value at the rate of Rs.150/- p.s.m. He further submitted that the power of attorney holder of the claimant Prakash V.Deodhar was not concerned in any manner with the acquisition of the said land, and therefore, he had no personal knowledge in respect of the land under acquisition. He submitted that therefore his evidence also is liable to be ignored and in the absence of the evidence of the owner of the land, it is not possible to come to a conclusion that the market value of the land was Rs.150/- p.s.m.. He further submitted that the reference Court had erred in granting damages to the tune of Rs.150/- p.s.m. to the claimant on account of severance of land belonging to the claimant. Though there was no evidence brought on record regarding the manner and the exchange between the said severance and the extent of damages of severance of the remaining land which was belonging to the claimant, he submitted that no clear and cogent reasons were given by the reference Court for arriving at the figure of Rs.150/- p.s.m. towards damages

particularly when there was no evidence on record. He further submitted that the reference Court had clearly erred in awarding damages at the rate of Rs.150/- p.s.m. He submitted that while determining the market value of the land, the Court has to take into consideration various factors which are laid down under Section 23 of the said Act and ignore certain factors which are laid down under Section 24 of the said Act. He submitted that the loss which was caused to the claimant as a result of severance of land was different and distinct from the damages which had incurred as a result of severance at the time when the possession of the land was taken by the Special Land Acquisition Officer. He submitted that the reference Court had the jurisdiction to consider several factors enumerated in Section 23, viz. fourth clause, which permitted the S.L.A.O. to consider the loss which was caused as a result of severance of the land. He submitted that however the reference Court did not have jurisdiction to award damages. He submitted that therefore the award which was passed by the reference Court in respect of the damages which were awarded at the rate of Rs.150/- p.s.m. was patently without jurisdiction and therefore the award was liable to be quashed and set aside.

Findings and Conclusion:

6. In support of his claim, which was filed in the reference application under Section 18 of the said Act, the claimant examined two witnesses. The witness No.1 is the power of attorney holder, Prakash V. Deodhar. The witness No.2 is the expert valuer Shri Jeevan Narayan Kulkarni. The claimant also relied upon the award which was passed under Section 11 of the said Act in respect of the Unit Case No.5 of 1981 of village Kalundre; the Case No.207(235) of village Kalundre; the notice issued to Government Authorities for Encroachment dated 4th May, 1984; reply to the said notice by Acquiring Body dated 17th May, 1984; and further correspondence between the parties. Further he relied upon the letter dated 28th January, 1985 (Exhibit-47) in respect of the allotment of land at Kalundre village for Gas Cylinder Godown; agreement to lease executed between the CIDCO Ltd. and Shri Varde, GAS Distributors at the rate of Rs.150/- p.s.m. Another agreement to lease between the CIDCO Shri V.R.Sharma at the rate of Rs.1873.28 p.s.m. dated 16th October, 1984; the Valuation Report by the Expert Shri A.R.Wagle (Exhibit-35); and another Valuation Report by the Expert Shri Jeevan Kulkarni. Reliance was also placed on the judgments

on various cases from Khopoli and Ambetarkhar, i.e. Judgment and Award passed in L.A.R.No.357 of 1986 by the Reference Court, Alibag, and L.A.R.No.172 of 1986 which was also of Raigad, Alibag.

7. The Witness No.1 Shri Deodhar, Power of Attorney Holder, led evidence. He stated that he is the Power of Attorney Holder of the claimant, who was the owner of the land. He stated that the land under reference was converted into non agriculture land and before conversion into non agriculture land, there was a dispute regarding the area of acquired land and therefore the complaint was made for joint survey and finally the order was passed in the year 1980 whereby the area was declared to be 2770 sq.metres. He further stated that in respect of L.A.R.No.5 of 1981, the compensation at the rate of Rs.22.70 p.s.m. was awarded in the year 1972 and thereafter the S.L.A.O. handed over the possession of the land to the CIDCO authority, who in turn leased out the said land at the rate of Rs.75/- p.s.m. He thereafter stated that the reply was given to the notice which was given under Section 9(3)(4) and the compensation at the rate of Rs.2,000/- p.s.m. along with the special compensation on account of forcible possession which was taken by the S.L.A.O. was claimed. He also produced Sale Deed

showing that the land was sold at the rate of Rs.150/- p.s.m. This witness was cross-examined then and in the cross examination, he stated that he did not know when the land in question was purchased by Shri Limaye, owner of the land. It was also admitted that the Sale Deed in respect of the land was not produced. He further admitted that Kalamboli in respect of which the lease deed was produced by him was at a distance of 3 and 1/2 kms. from Panvel towards the Northern side whereas the land under reference was towards the Southern side of Panvel. He also admitted that the lease deed of the village Kalamboli was of the year 1984.

8. From the evidence of this witness, it can be seen that it is difficult to rely on the evidence of this witness firstly because he is the power of attorney holder, who on his own admission does not have any knowledge about the valuation of the land at the time when the land was purchased by the owner. Further, the original Sale Deed also had not been produced by him. He has admitted that he does not have personal knowledge about the land in question. This witness does not state what was the damage caused to the property as a result of forcible possession which was allegedly taken by the S.L.A.O. In our

view, therefore, it will not be possible to rely on his evidence for the purposes of coming to the conclusion what was the market value of the land on the date on which the notification under Section 4 was issued.

9. The claimant has thereafter examined the Witness No.2 Jeevan Kulkarni, who is the Expert Valuer. He has stated in his evidence that he had passed B.E.(Civil) and had Diploma in Town and Country Planning, Specialisation in Traffic and Transportation on Associate Member of Institute of Town Planners, Fellow member of Institute of Valuers, Valuation Officer, Government of India. He was also the Loss Assessor and Approved Valuer, General Insurance Company for Fire, Engineering & Motor, Panvel Valuer, Bank of India, Urban Planner. He has stated that he inspected the site on 15th August, 1987 and after the inspection, he prepared a plan showing the land in question along with other landmarks, road, railway, industries, etc. He has stated that he had shown the various decisions of the Court, sale instances with a clear and distinct manner. The plan prepared by him was exhibited as Exhibit-33. Another plan prepared by him showing the land in question along with the landmarks and various court decisions which had been

decided after submission of the original plan is at Exhibit-32, and thereafter the additional map was also brought on record at Exhibit-34. Further he has stated that he had prepared another report showing various distances along with his friend late Shri Wagale, who had also prepared a valuation report. He admitted the signature of Shri Wagale on the said report. No objection was taken by the Government for exhibiting the said report and therefore the same was exhibited at Exhibit-35. He stated that the land in question is situated at village Kalundre which is adjacent to Panvel City towards its South and in front of the said land, there is Pune-Bombay National Highway No.4. He stated that by notification dated 4th February, 1970, the CIDCO had acquired chunk of land from the said village as also from Panvel and other villages and the remaining area was sought to be acquired at the time when the notification was issued in the year 1984 and therefore stated that in the year 1984, this is the only free-hold land which was available for acquisition. He has further stated that for the land which was acquired out of the said survey number in 1972-73, the trial Court had awarded compensation at the rate of Rs.22.70 p.s.m. which was confirmed by this Court in March, 1987. He has further stated that this aspect was considered by the

S.L.A.O. in his award. However, he had relied on the system known as belting system. The Witness No.2 has stated that, according to him, the belting system was not correct. He further pointed out that the CIDCO had leased out a plot from Kalamboli to one Shri Sharma at the rate of Rs.1873/- p.s.m. on 16th October, 1984 for a period of 60 years. He stated that the said land was infact at a distance about 320 metres away from Bombay-Pune Highway whereas the land in question is abutting to Bombay-Pune National Highway No.4. He further stated that the land was converted for N.A. use before 1972 and the claimant had intended to use it for petrol pump. Therefore, he submitted that in view of the various sale instances cited by him, he estimated the market value at Rs.2,000/- p.s.m. This witness was also cross examined at length. However, in his cross-examination, he has practically reiterated the same fact which he has stated in the examination-in-chief and has disputed the valuation.

10. From the evidence of the witness no.2, it can be seen that he had inspected the site on 15th August, 1987 in order to assess the market value as on 30th August, 1984 when the notification under Section 4 of the said Act was issued. The witness no.2 has worked

as Valuer for a considerable long period of time and has good credentials which can be seen from the fact of his work that he was working at the relevant time for Government and for various other renowned institutions. He has stated that the land in question was a free-hold land abutting to Bombay-Pune National Highway No.4 and that the land which was acquired in the year 1970 was given compensation at the rate of Rs.22.70 p.s.m., which was confirmed by this Court in March, 1987. From the map which has been brought on record by this witness and which is not disputed by the Government, it can be seen that there are various landmarks, such as railway station, bus stand, highway, post office, in the vicinity of the land in question. Thus, in our view, this witness has established in so far as the location of the land in question is concerned, that the said land had high development potential and the same was converted into N.A. use in the year 1972, and therefore, there was no question of inflation in the development cost as the basic amenities were easily accessible for the said plot of land. The fact that the land in question is converted into N.A. use in the year 1972 for the purpose of using the same for petrol pump was not in dispute. All these facts which are brought on record by Shri Kulkarni, the Witness No.2, therefore clearly

establish that the land had development potential and was in the vicinity of the area which had been already developed. However, from this evidence, it is not possible to accept the submission of learned counsel appearing on behalf of the claimant that the market value of the land in question was Rs.2,000/- p.s.m. on the date on which the notification under Section 4 of the said Act was issued. Firstly, the reliance is placed by the claimant on a lease executed by CIDCO in favour of one Sharma at the rate of Rs.1873/- p.s.m. cannot be used a yardstick for the purpose of coming to the conclusion that what was a market rate of the land in question. The witness No.2 Shri Kulkarni had admitted in his cross-examination that the land which was leased out by CIDCO was situated at a distance of at least 5 to 6 kms between Kalundre and Kalamboli villages and was further situated at the other end of Panvel. In the absence of any evidence to the effect that the land which was leased out was identical to the land of the claimant. It is not possible to accept this evidence on which the reliance is placed by the claimant. It is settled position in law that the entire burden of establishing the market value of the land is on the claimant and it is the duty of the claimant to bring on record the evidence to show that the sale instances on which the reliance is placed by

him are comparable and are similar to the land of the claimant which has been acquired. In the present case, apart from making a bald statement that certain land was leased out by CIDCO at the rate of Rs.1,800/- p.s.m. and above, no other evidence has been produced by him.

11. Even in respect of the other land under reference, the instances which are relied on by the claimant, the Witness No.2 Shri Kulkarni also has not stated in his evidence as to how and in what manner the land in the present case is similarly situated. Thus, it is not possible to accept the other evidence sought to be relied upon by the claimant.

12. However, in our view, it is an admitted position that in respect of the adjoining lands, the Reference Court had awarded the compensation at the rate of Rs.22.70 p.s.m. which was confirmed by this Court in March, 1987 in respect of the land when the notification was issued in the year 1972-73. In the present case, the notification under Section 4 was admittedly issued on 30th August, 1984. Therefore, if appreciation of the market value is taken into consideration at the rate of 10% per year which would be compounded every year, in our view, the market

value as of 1984 would be at Rs.150/- p.s.m., particularly taking into consideration the overall development potential of the land from 1972 to 1984 and the proximity of the highway, railway station and bus stand as also the post office from the said area. In our view, therefore, the finding recorded by the Reference Court of calculating the market value at the rate of Rs.150/- p.s.m. will have to be confirmed.

13. However, so far as the findings of the Reference Court in awarding compensation at the rate of Rs.150/- p.s.m. in respect of the land which was severed as a result of acquisition of land and damages towards the said severance of land are concerned, in our view, the said findings cannot be accepted for the following reasons.

. Section 23 of the Land Acquisition Act speaks of the matters to be considered in determining compensation. Section 23 thereof reads thus:-

> "23. Matters to be considered in determining compensation.- (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

first, the market value of the land at the date of the publication of the notification under section 4, sub-section (1);

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector’s taking possession thereof;

thirdly, the damage (if any), sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any), sustained by the person interested, at the time of the Collector’s taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or

his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1A) In addition to the market value of the land, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market-value for the period commencing on and from the date of publication of the notification under section 4, sub-section (1), in respect of such land to the date of the

award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation.- In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any Court shall be excluded.

(2) In addition to the market-value of the land, as above provided, the Court shall in every case award a sum of thirty per centum on such market-value, in consideration of the compulsory nature of the acquisition."

14. Section 23 quoted above, deals with the damage sustained by the claimant which has the effect of affecting his other property in any other manner or affecting his earnings in respect of the said piece of land which was severed on account of acquisition of the land at the time of taking possession thereof. In the present case, no evidence has been brought on record to establish that the claimant had sustained any damage as a result of severance of property or that it had affected his earnings or had affected his

property in any other manner. In the absence of such an evidence, it is not possible to award damages for severance of the property to the claimant. The Reference Court, in our view, had therefore clearly erred in granting damages at the rate of Rs.150/- p.s.m. in respect of the severance of property particularly when no evidence was brought on record by both the witnesses examined by the claimant. Apart from that, the Reference Court has not given any clear cogent reason while recording the said finding. The said finding regarding damages, awarded by the Reference Court, will have to be set aside.

15. In the result, therefore, the First Appeal No.766 of 1991 filed by the Government is partly allowed. The judgment and order passed by the lower Reference Court is modified to the extent it has granted damages to the claimant at the rate of Rs.150/- p.s.m. for the area admeasuring 537 sq.metres. Rest of the award is maintained and confirmed. The First Appeal No.32 of 1991 filed by the claimant is dismissed. Needless to state that the solatium and other component of Section 23(1)(a) of the said Act and interest, etc. shall be in consonance with the award as modified by this Court under this order.

16. Both the appeals are disposed of accordingly. The rule in First Appeal No.766 of 1991 is made absolute in above terms and the rule in First Appeal No.32 of 1991 is discharged.

(R.M.S.KHANDEPARKAR, J)

(V.M.KANADE, J)